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PROTECTION OF MINORITIES

Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities

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Addendum 4

Recommendations

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I. GENERAL

1. The State should be the common home for all parts of its resident population under conditions of equality, with separate group identities being preserved for those who want it under conditions making it possible to develop those identities. Neither majorities nor minorities should be entitled to assert their identity in ways which deny the possibility for others to do the same, or which lead to discrimination against others in the common domain. A primary role of any State is to facilitate the equitable sharing of the economic wealth and social benefits of the nation as a whole. Priority in minority protection should be given to members of groups which are truly vulnerable, subject to discrimination and marginalization by the majority.

2. Specific guidelines for the recommendations can be derived from a combined use of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Together, these instruments should be held to constitute minimum rules for peaceful coexistence and constructive cooperation among members of different ethnic, religious and linguistic groups inside States, to be supplemented by the provisions of the Declaration on the Rights of Indigenous Peoples, when the latter is adopted.

3. There is a necessity, in all States, to have a common domain of equality and non-discrimination. This will unavoidably imply some degree of integration. This necessity arises from obligations undertaken by States under the international human rights conventions and is required, inter alia, for the State to be able to ensure equality and non-discrimination in the enjoyment of human rights. However, the integration should be developed on a basis of equality, with all groups contributing their own values and cultures to shape the common domain where their members all interact.

II. MEASURES TO BE TAKEN AT THE NATIONAL LEVEL

4. For the long-range prevention of ethnic or religious hatred and intolerance, measures should be taken to ensure that the substantive content of childhood and adult education is fully in line with the requirements of the Universal Declaration of Human Rights, article 26.2, the Convention on the Rights of the Child, article 29. (1) (b) (c) and (d), and the International Convention on the Elimination of All Forms of Racial Discrimination, article 7. Human rights education should be made a core curriculum subject in universal primary education.

5. Group conflicts often give rise to propaganda and to the emergence of organizations that attempt to justify discrimination based either on notions of racial superiority or the incompatibility of cultures or on other grounds. States should therefore take all necessary steps to implement article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which, prohibits the dissemination of ideas based on racial superiority or hatred, incitement to racial and ethnic discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and to prohibit organizations based on such ideas, as mentioned in article 4.

6. States should take all necessary steps to ensure that perpetrators of acts of ethnic and religious violence are quickly apprehended and prosecuted under conditions of fair trial. Impunity for instigators and perpetrators of group violence, whether members of majorities or minorities, leads to an escalation of conflict. In situations of extreme instability, however, the State is unable to apprehend the perpetrators. The international community should therefore have a supplementary role. Outside States should, at the least, prohibit their citizens from participating in violent group conflicts inside other States or inciting violence there, and should effectively prosecute those who violate such prohibitions.

7. It is recommended that national forums (councils, commissions) be set up to propose, for the national legislature and administration, appropriate guidelines for the combined implementation of ICERD and the 1992 Declaration on minorities, taking into account the particular situations in the country concerned. The different ethnic, religious and linguistic groups existing in the country, whether minorities or majorities, should be represented in such national forums.

Education, language and culture

8. Minorities should have the right to education in their own language. While the need is recognized for one or more official languages for State-wide communication, States should allow for, and take special measures to ensure, education in and the use of regional and minority languages, as appropriate. Majorities and minorities in States not members of the Council of Europe might find it useful for this purpose to seek inspiration from the European Charter on Regional and Minority Languages.

9. Minorities should receive education about their own culture, and also of the culture of other groups in society, majority or minority.

10. The curricula in all States should teach tolerance of all groups.

11. Majority groups should learn about the cultures of minority groups in ways which make it possible for them to appreciate those cultures as an enrichment to society as a whole.

12. Members of different groups should enjoy the right to participate, on the basis of their own culture and language, in the cultural life of the community, to produce and enjoy arts and science, to protect their cultural heritage and traditions, to own their own media and other means of communication and to have access on a basis of equality to State-owned or publicly controlled media.

Civil rights

13. The civil rights of members of minorities, as of majorities, should be given full and equal protection. Visible, impartial and effective implementation of national legislation in this field should be ensured to all. Adequate training should be given to law enforcement officials and others who deal directly with the public.

Economic and social rights

14. Members of different groups should enjoy economic and social rights on a basis of equality. In those situations where members of particular minorities are economically in a weaker position than members of majorities, measures of affirmative action should be adopted on a transitional basis to redress the inequality. In that respect, specific policies should be formulated in cooperation with members of vulnerable groups to achieve equality of opportunity and access.

15. There should be established an ongoing, systematic monitoring of the situation of vulnerable groups through periodic sampling and collection of statistical information disaggregated by racial or ethnic group, particularly with respect to such fundamental economic and social indicators as infant mortality rates, life expectancy, literacy, level of educational attainment and average disposable income.

16. Members of the different ethnic, religious and linguistic groups should on a basis of equality participate in, contribute to and benefit from the right to development. Consequently, development policies should be conducted in ways which decrease the disparities that might exist between different groups. Groups living compactly together should always be fully consulted with regard to development projects affecting the regions in which they live.

Effective political participation

17. While it is essential that members of different groups, majority and minority, be given opportunities for effective participation in the political organs of society in ways which avoid obstruction of necessary decision-making, no single formula exists which is appropriate to all minority situations. The basic requirement is that everyone shall have the right and opportunity, without discrimination, to take part in the conduct of public affairs. To avoid this leading to majoritarian neglect of the concerns of minorities, or to a veto by minorities in areas where it would not be justified, various possibilities exist. It is recommended that States and minorities explore the following options, as appropriate to their particular situation:

(a) Advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion;

(b) Elected bodies and assemblies ("parliaments") of national or ethnic, religious and linguistic minorities;

(c) Self-administration (functional autonomy, cultural autonomy) on a non-territorial basis by a minority of matters which are essential to its particular identity, such as the development of its language or its religious rites;

(d) Decentralized or local forms of government or autonomous arrangements on a territorial and democratic basis, including consultative, legislative and executive bodies chosen through free and periodic elections without discrimination;

(e) Special measures to ensure minority representation in the legislature and other elected bodies of the national society, even when their numerical strength is too small to have representation under normal conditions. In proportional electoral systems minimum thresholds for representation might be waived when minorities are concerned.

Constitutional arrangements

18. Some of the above arrangements should be incorporated into the constitution of the country concerned, in particular when autonomy or other forms of pluralism on the basis of territorial subdivision is concerned.

19. It should be recognized, however, that group relations change over time and need different responses at different times. It is therefore necessary to ensure flexibility to accommodate the changing relations in the most constructive way possible.

Duties to society

20. Members of minorities should recognize and respect their duties to the society at large. The 1992 Declaration makes it clear, in article 8, paragraph 4, that it cannot be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States. Members of minorities should also strictly abide by the prohibition of propaganda and of organizations which seek to justify or promote racial or ethnic hatred, and abstain from incitement to acts of violence against members of other groups. No external support should be given, through States or private organizations, to groups which engage in violence against other racial and ethnic groups.

Recourse and conciliation machineries

21. Everyone, including members of minorities, has the right of effective remedy by the competent national tribunals for acts violating their rights granted by the constitution or law. Normal legal procedures are often slow and costly, and not always suited to conflict resolution. It is therefore recommended that States establish, in addition to courts and tribunals, other mechanisms, such as a special ombudsman against ethnic discrimination (now existing in Sweden); commissions on racial and ethnic reconciliation, which exist in several countries, or human rights committees that are given as one of their tasks to ensure equality and conditions for the promotion of separate identity.

22. In times of vast political, constitutional and institutional change, pre-existing arrangements applying to nationalities and minorities, such as autonomy structures, should not be immediately demolished even if incompatible with the new structures, but a transition period should be provided to enable the adoption of confidence-building measures whereby the groups concerned can adapt to the new situation without loss of identity or acquired rights.

23. Practices of ethnic cleansing must be considered illegal and should not be permitted under any circumstance. Populations which have been forced to flee during periods of ethnic conflict should be entitled to return under conditions of safety and to receive adequate compensation for losses to which they have been subjected.

24. State-sponsored mass population transfers give rise to numerous human rights problems and negatively affect group relations. Such transfers should never be undertaken except for short-term emergency purposes, and then only provided arrangements are made for an early return of the population transferred.

III. MEASURES AT THE INTERNATIONAL LEVEL

A. At the bilateral level

25. Group conflicts sometimes affect bilateral relations between States. For the protection of international peace, stability within States and the preservation of the existence and identity of minority groups, it is essential to use and further to develop mechanisms to deal with such issues at the bilateral, subregional, regional and universal levels.

26. In accordance with the Charter of the United Nations, States should strictly observe in their bilateral relations the principle of non-intervention. They should abstain from any use of force and also from any encouragement of the use of violence by parties to group conflicts in other States, and should take all necessary measures to prevent the incursion by any armed group or mercenaries into other States to participate in group conflicts.

27. In their bilateral relations States should engage in constructive cooperation to facilitate reciprocal protection of the equality and promotion of group identities. States should conclude bilateral treaties or other arrangements on good neighbourly relations based on the principles of the Charter and on international human rights law, combining commitments of strict non-intervention with provisions for cooperation in facilitating the promotion of conditions for the maintenance of group identities and transborder contacts by members of minorities.

28. The contents of provisions on minorities contained in such treaties and other bilateral arrangements should be based on universal and regional instruments on equality, non-discrimination and minority rights, including the Document of the Copenhagen Meeting on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE) of 1990 and the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Where specific minorities are mentioned in such provisions, the treaty should contain an additional provision ensuring that minorities not mentioned in the treaty shall enjoy the same level of protection and promotion of their existence and identity.

29. Such treaties should include provisions for the settlement of disputes over their implementation. Should disputes arise over the implementation of and compliance with such bilateral treaties or other arrangements, the State

parties should first seek a solution in accordance with the procedure foreseen in the treaty or arrangement. When a State feels that this does not give satisfaction to its concern, it should turn to the relevant regional or United Nations bodies for assistance conflict resolution. Such assistance could include fact-finding, monitoring, the use of advisory services and, where appropriate, other mechanisms as envisaged by the Secretary-General of the United Nations in his Agenda for Peace.

B. Regional and subregional action

30. Regional and, as appropriate, subregional organizations should increase their efforts to provide procedures and channels for early and peaceful settlement of disputes involving minorities.

31. For the CSCE region, States should for these purposes make full use of the mechanisms and procedures now in existence, including fact-finding and monitoring. They should avail themselves of the office of the CSCE High Commissioner on National Minorities at the earliest possible stage in the evolution of a potential conflict. It is recommended that more resources be placed at the disposal of the High Commissioner to carry out his task.

32. The Council of Europe should complete as soon as possible the draft now under preparation of a protocol or convention on the rights of national minorities. The handling of complaints under the instrument to be adopted should preferably be placed under the jurisdiction of the European Commission on and Court of Human Rights.

33. The Roma (Gypsy) population constitutes the most vulnerable minority in many parts of Europe. Recent changes have caused a deterioration in their position. European-wide measures should urgently be undertaken, coordinated by CSCE or the Council of Europe, to prevent continued discrimination and to promote their equality in fact.

34. The Commission established under the African Charter of Human and Peoples' Rights, and the Inter-American Commission on and Court of Human Rights, should address the situation of minorities under the provisions of their respective instruments dealing with equality and non-discrimination.

C. United Nations human rights bodies

35. Group conflicts within States, including racial discrimination, constitute a problem of such magnitude that a global and system-wide strategy for peaceful and constructive solutions appears necessary.

36. The Sub-Commission on Prevention of Discrimination and Protection of Minorities was established in 1947 with the primary task of making recommendations in this field. It should now consider the feasibility and usefulness of the preparation of a comprehensive programme of action which would include measures for the elimination of racial, ethnic and religious discrimination combined with measures to promote the rights of members of ethnic, religious and linguistic minorities, based on respect for territorial

integrity and the promotion of the political and social stability of States. The programme of action should be seen in conjunction with the efforts to promote the rights of indigenous peoples.

37. To develop such a comprehensive programme would correspond to the mandate of the Sub-Commission as reflected in its title. A broad, coherent strategy would require considerable efforts, drawing together the Programme of Action for the Third Decade to Combat Racism, the concluding observations and general recommendations adopted by the Committee on the Elimination of Racial Discrimination (CERD), recommendations for the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, recommendations for the implementation, when adopted, of the Universal Declaration on the Rights of Indigenous Peoples, and other elements. Should the Sub-Commission take it upon itself to draft such a broad programme of action, it would reflect its multidimensional work in the field of prevention of discrimination and protection of minorities.

38. It is recommended that a task force be set up, without financial implications, to present to the Sub-Commission at its forty-sixth session suggestions for an outline of such a programme.

39. More specifically, the Sub-Commission should study problems affecting the situation of minorities in several parts of the world.

40. It should study the problem of nationality laws (citizenship) and their implementation, with special emphasis on situations where federations or other larger entities have been dissolved into two or more independent States. Whether such States are considered as successors or as restored States, the needs and concerns are the same for the human beings who have taken up what was intended to be permanent residence in that territory in accordance with the law in force when they did so. International law is vague on this matter, and experts have given conflicting views on how it should be resolved. The Executive Committee of the Office of the United Nations High Commissioner for Refugees has recommended that United Nations human rights bodies address issues of statelessness, including the problem of arbitrary deprivation of nationality and the content of the right to a nationality.

41. With regard to self-determination, while the scope and meaning of the right to self-determination has been the subject of two earlier studies by the Sub-Commission, they have focused mainly on the situation of peoples living in colonial or other Non-Self-Governing Territories, including territories occupied in violation of the Charter of the United Nations. The controversies over alleged rights to self-determination of groups living within sovereign States have severely obstructed peaceful solutions to contemporary ethnic conflicts. It is therefore recommended that the Sub-Commission study the meaning and scope of self-determination for groups living within sovereign States.

42. Concerning the prevention of group conflicts, as is demonstrated in chapter III of this study, regional and United Nations human rights bodies already play a role in preventing group conflicts based on ethnicity, language and religion. Recommendations will be made below as to how these bodies can

strengthen their preventive role. It is recommended, however, that the Sub-Commission undertake a more comprehensive study on ways in which the organized international community, in particular the human rights bodies, can become more effective in preventing violent group conflicts.

43. On monitoring by the use of indicators, the Sub-Commission might study ways to assist States in carrying out an ongoing, systematic monitoring of the situation of vulnerable groups through periodic sampling and collection of statistical information disaggregated by racial, ethnic, religious or linguistic groups.

44. The Commission on Human Rights should consider establishing a working group on minority issues which should provide access to representatives of both Governments and minorities. The mandate of the group might be to examine the situation in different parts of the world and to develop more specific guidelines for the implementation of the 1992 Declaration. The Commission and its working group should thereby be made the focal point for all United Nations activities undertaken within respective mandates. By providing a voice for the groups concerned, it would serve to facilitate communication between minorities and Governments and to develop methods for conflict resolution or direction of the conflict into peaceful channels.

45. The Commission on Human Rights should ensure that fact-finding and reporting under the special procedures (the thematic and country rapporteurs and the working groups on disappearances and on detention) also address minority issues under the respective mandates.

46. The Centre for Human Rights should consider the formation of a team dealing with prevention of discrimination and protection of the rights of vulnerable minorities and of indigenous peoples, ensuring continuity and competence in the subject.

47. In its programme of technical assistance and advisory services the Centre should develop its capacity to help in the prevention of group conflicts. As requested in the Vienna Declaration, (sect. II, para. 25), the Centre should at the request of Governments provide qualified expertise on minority issues and human rights, as well as on the prevention and resolution of group conflicts. The programme of advisory services and technical assistance should develop training manuals on inter-ethnic relations and on ways to consolidate and stabilize pluri-ethnic, pluri-linguistic and pluri-religious societies, including constitutional models, national forums and conciliation arrangements and approaches to devolution of power. In cooperation with UNESCO and the Committee on the Rights of the Child, the programme of advisory services could also provide assistance and manuals on education in human rights and tolerance, including suggestions for core curricula in these fields.

48. The treaty bodies (committees monitoring the implementation of human rights conventions) can play a significant role in early warning and prevention of conflict. They should pursue an active dialogue with State parties, through the reporting procedure, on the dual task of ensuring equality and non-discrimination and of allowing groups to promote their

respective identities. In the further development of their preventive role the various treaty bodies could concentrate on different aspects of the problem, in line with their particular competence.

49. CERD has a crucial role to play in harmonizing the two concerns: for non-discrimination and for measures to create equality in fact. CERD should discuss, inter alia, the matter of allocation of citizenship and its consequences for indirect discrimination on grounds of race, colour, descent, or ethnic or national origin.

50. The Committee on Human Rights has already contributed significantly to the clarification of minority rights through its case law under article 27 of the International Covenant on Civil and Political Rights. It should now pursue its analysis of that article in the light of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

51. The Committee on Economic, Social and Cultural Rights, in its dialogue with reporting States, has already initiated and should strengthen its examination: (a) under article 11, in particular, of standards of living for different groups; (b) under article 12, of the level of health enjoyment by the different groups; (c) under article 13, of access to education which promotes equality but at the same time allows for the preservation of group dignity; (d) under article 15, which concerns cultural rights, of attention to the preservation of the cultural heritage of the different groups and their access to and participation in the media in the country concerned. The Committee should draw on the 1992 Declaration on minorities in formulating its questions.

52. In the guidelines used by the Committee on the Rights of the Child, reporting States are requested to provide information regarding non-discrimination in respect of all articles of the Convention. The Committee should give attention to the equal enjoyment, by children of minority as well as of majority groups, of the rights contained in the Convention. Special protection of children of minorities is provided for in article 30. The Committee should encourage the elaboration of statistics on the relative situation of children of majorities and minorities.

53. Also in the guidelines of the Committee on the Rights of the Child, States are requested to provide information on how respect for the views of the child (art. 12) is ensured. The Committee should give attention to the ways in which respect for the views of the children of minorities is ensured.

54. The Committee on the Rights of the Child should give special attention to the implementation of the aims and content of education, as provided for in article 29 of the Convention, examining whether and how the educational policies of States pursue the dual task of promotion of equality and tolerance of separate identities.

55. The Committee on the Elimination of Discrimination against Women (CEDAW) should in its dialogue with Governments explore the relative situation of women belonging to minorities as well as to majorities, and make suggestions as to ways in which inequalities can be addressed.

D. Specialized agencies and other organs of the United Nations

56. In general terms, United Nations agencies should give priority and additional resources to programmes that encourage cooperation between groups and reduce the prospect of group conflicts. Great care should be taken to avoid measures that can reinforce ethnic cleavages and to concentrate on activities that can serve to build bridges between the groups.

57. The work of the Office of the United Nations High Commissioner for Refugees (UNHCR) is deeply affected by group conflicts, which lead to large-scale refugee flows and to internal displacement of peoples. Prevention, as well as resolution, of group conflicts is therefore essential to reduce the burden and tragedy of refugee flows. UNHCR field workers should therefore be provided with adequate information about the rights of minorities, and should also be called upon to provide early warning of emerging conflicts in order to facilitate prompt assistance by the international community in the resolution of conflicts.

58. UNESCO should further develop its dual role, particularly in the fields of education and culture, of promoting respect for universal values of human rights on a basis of equality at the national and international levels, while harmonizing this with the promotion of respect for different cultures and identities. It should continue its efforts to compile and publish a comprehensive collection of national legislation on the rights of persons belonging to minorities, which is foreseen for 1994-1995.

59. The International Labour Organisation (ILO) should further develop its efforts, particularly in the fields of workers' rights, employment and access to sources of livelihood. Vulnerable minorities are often subjected to discrimination in access to work and conditions of work (equal wages and benefits, training, etc.). ILO should harmonize the quest for equality and non-discrimination with the protection of separate identities, which in some cases may require special arrangements in both the workplace and the economy at large. The experience derived from its comprehensive work with indigenous and tribal peoples might be drawn upon also in some other minority situations.

60. The financial and development institutions of the United Nations should evaluate their development policies and projects to ensure that they do not lead to unequal benefits for the different groups in society. They should ensure that groups who live compactly together in regions of the States concerned are appropriately consulted about projects affecting their region. When differential impact of development projects is unavoidable, financial institutions should encourage Governments to redistribute, through their fiscal, social and other policies, the gains and losses of economic development activities. Projects should include arrangements by which adequate compensation can be given to members of groups affected when losses do occur.

61. There should also be more systematic training and information programmes directed to the staff of financial and development agencies of the United Nations concerning the relevant international standards of non-discrimination and protection of minorities, and the need to support and assist efforts to prevent and resolve group conflicts.

62. The World Bank, which to an increasing extent concerns itself with the promotion of good governance, development and human rights, should seek to ensure that all groups, minority as well as majority, can benefit from and make use of the transparency and accountability of decision-making and performance in the economic field which the World Bank seeks to promote.

63. The United Nations Research Institute for Social Development, whose programme of studies carried out over the last few years on ethnic conflicts and their solution has provided many useful insights, should be called upon to provide the Secretary-General with its suggestions, for use among the human rights bodies, on ways in which its findings may be used in the prevention and solution of group conflicts.

E. Non-governmental organizations

64. Non-governmental human rights organizations can play a significant and constructive role in the prevention of group conflicts. They have, in some cases, better contact and communication with minority groups than inter-State organizations have, and could thereby help to create awareness of problems before they erupt into violence.

65. Treaty bodies should encourage non-governmental organizations to provide them with information supplementary to that provided by States. This could facilitate a more realistic, and thereby more constructive, dialogue between the treaty bodies and the States, which could contribute to the early settlement of grievances that otherwise could erupt into violence.

66. Non-governmental organizations should take fully into account the dual task of promoting the enjoyment of human rights by everyone on a basis of equality, and of promoting conditions for the preservation and promotion of separate identities.

67. They should at all times abstain from, and actively oppose, incitement to any act of ethnic or religious discrimination, xenophobia or hatred, and should never persuade minority or majority groups to assert their demands in ways which can lead to the exclusion, discrimination or persecution of members of other groups on ethnic, religious or linguistic grounds.

68. Non-governmental organizations should actively work for the building of bridges between groups in conflict, isolating those who incite hatred and encouraging those who seek cooperation on the basis of reciprocal respect.

69. International religious organizations and authorities should recognize their special responsibility in dissuading local groups belonging to their religion from engaging in xenophobia or incitement to hatred based in part or in whole on religious intolerance. They should cooperate with the United Nations, including UNESCO, and with regional organizations in developing programmes to combat intolerance on the grounds of religion and belief.